

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JOY BETH ANNE FITZGERALD
a.k.a. JOY BETH ANNE MCGILL
1933 Glasgow Avenue
Cardiff by the Sea, CA 92007

Registered Nurse License No. 620299

Respondent

Case No. 2012-162

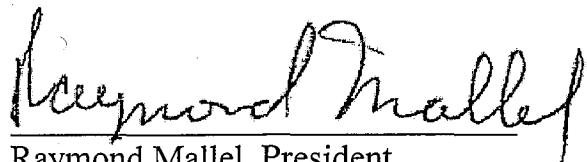
OAH No. 2011110411

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **February 2, 2013.**

IT IS SO ORDERED **February 2, 2013.**



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
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Attorneys for Complainant

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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

12 **JOY BETH ANNE FITZGERALD,**
13 **AKA JOY BETH ANNE MCGILL**
14 **1933 Glasgow Avenue**
Cardiff by the Sea, CA 92007

15 **Registered Nurse License No. 620299**

16 Respondent.

Case No. 2012-162

OAH No. 2011110411

STIPULATED SURRENDER OF
LICENSE AND ORDER

17
18 In the interest of a prompt and speedy resolution of this matter, consistent with the public
19 interest and the responsibility of the Board of Registered Nursing of the Department of Consumer
20 Affairs the parties hereby agree to the following Stipulated Surrender of License and Order which
21 will be submitted to the Board for approval and adoption as the final disposition of the
22 Accusation.

23 **PARTIES**

24 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Executive Officer of the Board of
25 Registered Nursing. She brought this action solely in her official capacity and is represented in
26 this matter by Kamala D. Harris, Attorney General of the State of California, by Karen L.
27 Gordon, Deputy Attorney General.
28

2. Joy Beth Anne Fitzgerald, aka Joy Beth Anne McGill (Respondent) is represented in this proceeding by attorney John D. Bishop, whose address is 1100 W. Town & Country Road, Ste. 1010, Orange, CA 92868.

3. On or about June 26, 2003, the Board of Registered Nursing issued Registered Nurse License No. 620299 to Joy Beth Anne Fitzgerald, aka Joy Beth Anne McGill (Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought in Accusation No. 2012-162 and will expire on May 31, 2013, unless renewed.

JURISDICTION

4. Accusation No. 2012-162 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on September 19, 2011. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 2012-162 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2012-162. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 2012-162, agrees that cause exists for discipline and hereby surrenders her Registered Nurse License No. 620299 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation she enables the Board to issue an order accepting the surrender of her Registered Nurse License without further process.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 620299, issued to Respondent Joy Beth Anne Fitzgerald, aka Joy Beth Anne McGill, is surrendered and accepted by the Board of Registered Nursing.

1. The surrender of Respondent's Registered Nurse License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board of Registered Nursing.

2. Respondent shall lose all rights and privileges as a Registered Nurse in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board her pocket license and, if one was issued, her wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a Petition for Reinstatement. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Accusation No. 2012-162 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition.

5. If and when Respondent's license is reinstated, she shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$2,655.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the license.

6. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 2012-162 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

7. Respondent shall not apply for licensure or petition for reinstatement for two (2) years from the effective date of the Board of Registered Nursing's Decision and Order.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, John D. Bishop. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED:

10-25-12



JOY BETH ANNE FITZGERALD,
AKA JOY BETH ANNE MCGILL
Respondent

APPROVAL

I have read and fully discussed with Respondent Joy Beth Anne Fitzgerald, aka Joy Beth Anne McGill the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED:

10-30-12


JOHN D. BISHOP
Attorney for Respondent

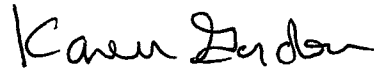
ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

Dated: 11-1-12

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General


KAREN L. GORDON
Deputy Attorney General
Attorneys for Complainant

LA2011601075
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Exhibit A

Accusation No. 2012-162

1 KAMALA D. HARRIS
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2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
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4 Senior Legal Analyst
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Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. **2012-162**

12 **JOY BETH ANNE FITZGERALD,**
13 **aka JOY BETH ANNE MCGILL**
14 **1933 Glasgow Avenue**
Cardiff by the Sea, CA 92007

A C C U S A T I O N

15 **Registered Nurse License No. 620299**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about June 26, 2003, the Board of Registered Nursing issued Registered Nurse
24 License Number 620299 to Joy Beth Anne Fitzgerald, also known as Joy Beth Anne McGill
25 (Respondent). The Registered Nurse License was in full force and effect at all times relevant to
26 the charges brought herein and will expire on May 31, 2013, unless renewed.

27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board

1 may inquire into the circumstances surrounding the commission of the crime in order
2 to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"
4 and "registration."

5 9. Section 2761 of the Code states:

6 The board may take disciplinary action against a certified or licensed nurse or
7 deny an application for a certificate or license for any of the following:

8 (a) Unprofessional conduct, which includes, but is not limited to, the
following:

9

10 (f) Conviction of a felony or of any offense substantially related to the
11 qualifications, functions, and duties of a registered nurse, in which event the record of
the conviction shall be conclusive evidence thereof.

12

13 10. Section 2762 of the Code states:

14 In addition to other acts constituting unprofessional conduct within the meaning
15 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
licensed under this chapter to do any of the following:

16

17 (b) Use any controlled substance as defined in Division 10 (commencing with
18 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
19 dangerous or injurious to himself or herself, any other person, or the public or to the
extent that such use impairs his or her ability to conduct with safety to the public the
20 practice authorized by his or her license.

21 (c) Be convicted of a criminal offense involving the prescription, consumption,
or self-administration of any of the substances described in subdivisions (a) and (b) of
22 this section, or the possession of, or falsification of a record pertaining to, the
substances described in subdivision (a) of this section, in which event the record of
23 the conviction is conclusive evidence thereof.

24

25 REGULATORY PROVISIONS

26 11. California Code of Regulations, title 16, section 1444, states:

27 A conviction or act shall be considered to be substantially related to the
28 qualifications, functions or duties of a registered nurse if to a substantial degree it
evidences the present or potential unfitness of a registered nurse to practice in a

manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

12. California Code of Regulations, title 16, section 1445 states:

....

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

COSTS

13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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FIRST CAUSE FOR DISCIPLINE

(February 3, 2011 Criminal Conviction for DUI on August 3, 2010)

14. Respondent has subjected her license to disciplinary action under sections 490 and 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

a. On or about February 3, 2011, in a criminal proceeding entitled *People of the State of California v. Joy Beth Ann McGill, aka Joy Bethann McGill, aka Bethanne McGill, aka Joy Beth Fitzgerald*, in Orange County Superior Court, case number 10HM08831, Respondent was convicted on her plea of guilty of violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of 0.08% or more, a misdemeanor.

Respondent admitted, and the court found true, the enhancement that Respondent's BAC was .20% or more, pursuant to Vehicle Code section 23538, subdivision (b)(2). An additional count of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol, was dismissed pursuant to a plea agreement.

b. As a result of the conviction, on or about February 3, 2011, Respondent was sentenced to three years summary probation, and ordered to attend and complete a six-month Level 2 First Offender Alcohol Program and a MADD Victim Impact Panel, pay \$1,922 in fees, fines, and restitution, and comply with the terms of standard DUI probation.

c. The facts that led to the conviction are that on or about the evening of August 3, 2010, a patrol officer with the Irvine Police Department conducted a traffic stop on Respondent after he observed her driving in an unsafe manner. Upon making contact with Respondent, the officer noted the objective signs and symptoms of intoxication; Respondent's eyes were bloodshot and watery, her speech was slightly slurred, and there was a slight odor of an alcoholic beverage emitting from her breath and person. Respondent submitted to a series of field sobriety tests but she was unable to perform the tests as explained and demonstrated by the officer. Based on Respondent's objective symptoms of intoxication, her performance on the field sobriety tests, and her driving, she was placed under arrest for driving under the influence of alcohol. During

1 booking, Respondent provided two breath samples which were analyzed revealing a blood
2 alcohol concentration of .20 and .21 percent, respectively.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)**

5 15. Respondent has subjected her registered nurse license to disciplinary action under
6 section 2762, subdivision (b) of the Code in that on or about August 3, 2010, as described in
7 paragraphs 14, above, Respondent used alcoholic beverages to an extent or in a manner that was
8 potentially dangerous and injurious to herself, and to others in that she operated a motor vehicle
9 with a significantly high blood alcohol concentration.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct - Conviction of Alcohol-Related Criminal Offenses)**

12 16. Respondent has subjected her registered nurse license to disciplinary action under
13 section 2762, subdivision (c) of the Code in that on or about February 3, 2011, as described in
14 paragraph 14, above, Respondent was convicted of a criminal offense involving the consumption
15 and/or self-administration of alcohol, which constitutes unprofessional conduct.

16 **DISCIPLINARY CONSIDERATIONS**

17 17. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
18 to California Code of Regulations, title 16, section 1445 , subdivision (b), Complainant alleges
19 that on or about August 17, 1999, in a prior criminal proceeding entitled *People of the State of*
20 *Oklahoma v. Joy Beth Ann McGill*, in Cleveland County Court (Tulsa, Oklahoma), case number
21 CM1999-558, Respondent was convicted on her plea of guilty to driving under the influence of
22 alcohol or drugs, a misdemeanor. As a result of the conviction, Respondent was sentenced to one
23 year probation and fined \$100.

24 **PRAYER**

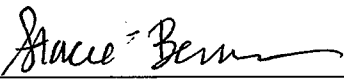
25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the Board of Registered Nursing issue a decision:

27 1. Revoking or suspending Registered Nurse License Number 620299, issued to Joy
28 Beth Anne Fitzgerald, also known as Joy Beth Anne McGill;

2. Ordering Joy Beth Anne Fitzgerald to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: September 19, 2011


for LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

LA2011601075